

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1204

Amending Administrative Rule 15, Appellate Rule 202, CINA Rule 22, Criminal Rule 6, Criminal Rule 11, Criminal Rule 24, Criminal Rule 32, and Evidence Rule 404 to incorporate legislative changes.

IT IS ORDERED:

1. Administrative Rule 15 is amended to read:

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(b) **Master Jury List.**

(1) By November 30 of each year the administrative director will prepare a statewide master list of prospective jurors in Alaska.

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(k) **Definitions.**

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(5) Jury Year — the term during which a master jury list is in effect; normally,

from November 30 of one year (when the list is compiled) until November 29 of the next year (when a new master list must be prepared).

. . . .

2. Appellate Rule 202 is amended to repeal paragraph (c):

(a) An appeal may be taken to the supreme court from a final judgment entered by the superior court, in the circumstances specified in AS 22.05.010.

(b) An appeal may be taken to the court of appeals from a final judgment entered by the superior court or the district court, in the circumstances specified in AS 22.07.020.

3. CINA Rule 22 is amended to include a note following the rule:

AS 47.10.092, added by ch. 98 § 2 SLA 1994, affects CINA Rule 22 by authorizing the parent or legal guardian of a minor subject to a proceeding under AS 47.10.010-.142 to disclose confidential or privileged information about the minor, including information lawfully obtained from a court file, to the governor, the lieutenant governor, a legislator, the ombudsman

appointed under AS 24.55, the attorney general, and the commissioners of health and social services, administration, or public safety, or an employee of these persons, for review or use in their official capacities. A person to whom such disclosure is made may not disclose confidential or privileged information about the minor to a person not authorized to receive it.

4. Paragraph (r) of Criminal Rule 6 is amended to read:

(r) Admissibility of Evidence.

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2) and (3), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

. . . .

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

5. Paragraph (c) of Criminal Rule 11 is amended to read:

(c) **Pleas of Guilty or Nolo Contendere.**

The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and

. . . .

(3) informing the defendant:

(i) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered, and

(ii) that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty; and

(iii) if the defendant is charged with a sex offense as defined in AS 12.63.100, informing the defendant in writing of the requirements of AS 12.63.010.

6. Paragraph (d) of Criminal Rule 24 is amended to read:

(d) **Peremptory Challenges.** A party who waives peremptory challenge as to the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who may be called. A juror peremptorily challenged is excused without cause. If the offense is punishable by imprisonment for more than one year, each side is entitled to 10 peremptory challenges. If the offense is punishable by imprisonment for not more than one year, or by a fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

7. Criminal Rule 32 is amended to include a new paragraph (c) to read:

(c) **Judgment for Sex Offenses.** When a defendant is convicted of a sex offense defined in AS 12.63.100, the written judgment must set out the requirements of AS 12.63.010.

8. Evidence Rule 404 is amended to read:

(a) **Character Evidence Generally.**

Evidence of a person's character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

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(2) *Character of Victim.* Evidence of a relevant trait of character of a victim of crime offered by an accused, or by the prosecution to rebut the same, or evidence of a relevant character trait of an accused or of a character trait for peacefulness of the victim offered by the prosecution in a case to rebut evidence that the victim was the first aggressor, subject to the following procedure:

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(b) **Other Crimes, Wrongs, or Acts.** (1)

Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to,

proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) occurred within the 10 years preceding the date of the offense charged;

(ii) are similar to the offense charged; and

(iii) were committed upon persons similar to the prosecuting witness.

(3) In a prosecution for a crime of sexual assault in any degree or attempt to commit sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent.

9. Sections 4, 5, 6, 7, and 8 of this order are adopted for the sole reason that the legislature has mandated the amendments.

10. The following note is added at the end of Criminal Rule 6:

Note to SCO 1204: Criminal Rules 6(r)(3) & (4) were added by ch. 114 § 2 SLA 1994. Section 4 of this order is adopted for the sole reason that the legislature has mandated the amendments.

11. The following note is added at the end of Criminal Rule 11:

Note to SCO 1204: Criminal Rule 11(c)(3)(iii) was added by ch. 41 § 10 SLA 1994. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendments.

12. The following note is added at the end of Criminal Rule 24:

Note to SCO 1204: The provision granting ten peremptory challenges to each side was added by ch. 117 § 1 SLA 1994. Section 6 of this order is adopted for the sole reason that the legislature has mandated the amendment.

13. The following note is added at the end of Criminal Rule 32:

Note to SCO 1204: The requirement that a judgment for conviction of a sex offense must set out the requirements of AS 12.63.010 was added by ch. 41 § 3 SLA 1994. Section 7 of this order is adopted for the sole reason that the legislature has mandated the amendments.

14. The following note is added at the end of Evidence Rule 404:

Note to SCO 1204: Ch. 116 § 2 SLA 1994 amended Evidence Rules 404(a)(2) and 404(b) to allow circumstantial use of character evidence and evidence of other crimes in certain criminal cases. Section 8 of this order is adopted for the sole reason that the legislature has mandated the amendments.

DATED: May 4, 1995

EFFECTIVE DATE: July 15, 1995

Chief Justice Moore

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